STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 14, 2011
v	No. 295402 Wayne Circuit Court
STANLEY JAMES MASON, Defendant-Appellant.	LC No. 09-010929-FC

Before: DONOFRIO, P.J., and CAVANAGH and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of the first-degree murder of Deshawn Jenkins ("Shawn"), MCL 750.316, felon in possession of a firearm, MCL 750.224f, and possessing a firearm in the commission of a felony ("felony-firearm") (second offense), MCL 750.227b. The trial court sentenced defendant to life imprisonment for the murder conviction, 6 to 15 years' imprisonment for the felon-in-possession conviction, and five years' imprisonment for the felony-firearm conviction. Because the late disclosure of the 911 tapes did not deny defendant a fair trial, defendant was not denied due process, no prosecutorial misconduct occurred, the trial court properly admitted autopsy photographs, and sufficient evidence supported defendant's first-degree murder conviction, we affirm.

I. FACTS

On the night of April 10, 2009, Jerone Mason hosted a birthday party at the Kings & Queens Rental Hall ("K & Q"), located at 15845 Schaefer in Detroit. Before being allowed admittance into K & Q, the guests were subjected to a pat-down search. Guests started showing up around 9:00 p.m., and the party lasted until around 3:00 a.m. on April 11, 2009.

During the party, a guest, Tammy Reed, got into a series of altercations with many people, including several other women and a man called "Pooh Bear." After these altercations, Tammy, being very upset called her friend, Artavia Epperson, to bring a pair of pants to K & Q. Tammy also called some other friends, Tia Tate and Tacara Woods, to come to K & Q. Artavia, Tia, and Tacara all arrived in separate vehicles. Deshawn Jenkins ("Shawn"), Tacara's boyfriend and fiancé, accompanied Tacara to K & Q. Artavia gave the pants to Tammy, and Tammy changed her clothes. When Tammy saw Shawn, she explained that "Pooh Bear" had punched her and she wanted to fight him.

The group waited in the parking lot until Tammy pointed out Pooh Bear as he walked into the parking lot from the K & Q building. Pooh Bear and Tammy yelled at each other and approached fighting. At that point, Shawn approached and hit Pooh Bear, knocking him to the ground. While Shawn was fighting Pooh Bear, who was still on the ground, another man jumped in and started hitting Shawn. The other man was wearing a multi-colored, checkered jacket. Shawn turned around, grabbed this other man, and slammed him to the ground as well. While Shawn was fighting these two individuals, defendant came up behind Shawn and struck him in the back of the head with his fist. Shawn eventually turned around and faced defendant. Tia, who knew defendant, physically jumped between them and repeatedly told defendant that Shawn was "with us." Defendant kept saying in response to Tia, "But that's my cousin!" referring to the man in the multi-colored, checkered jacket. Shawn, while grabbing defendant's arms, said, "I'm not going to fight you; I'm going to leave, when I let you go, don't hit me." Shawn also stated that he was going to leave with his girlfriend and Tammy. Defendant responded that nobody had been able to make Tammy leave all night. Shawn proceeded to let defendant go, and they separated with no incident. With her back to defendant, Tia heard defendant say that he was going to get a gun. Defendant walked out of the parking lot, turned left, and continued to walk north along Schafer.

By that point, Tacara had moved into the driver's seat of her vehicle. Shawn was upset and walked over to the driver's side and opened the door in order to talk with Tacara. Shawn was demanding that Tacara get out of the driver's seat so he could drive, but Tacara was resistant, saying that she did not want to move. During this conversation, Artavia, who was standing near the rear of the vehicle, saw defendant approach carrying a handgun. When defendant passed her she pulled on defendant's arms, pleading, "Please, no, he came with us." Defendant shrugged Artavia off and walked up to Shawn. Artavia testified that defendant placed the gun up to Shawn's head while Shawn was talking with Tacara. Artaia said that defendant was yelling, "F--k who? F--k what? F--k this. Watch this."

Artavia testified that Shawn then straightened up and turned to his right so that he was facing defendant. Defendant fired one shot striking Shawn in the left side of the neck. According to Artavia, defendant turned around and ran toward the street where a red minivan was waiting. Once near the minivan, defendant told the man with the multi-colored, checkered jacket, who was nearby, "Let's roll," and they both jumped in the minivan and quickly pulled away.

Shawn was pronounced brain dead and later died at 9:05 a.m. The medical examiner, Dr. John Somerset, testified that Shawn died from a single gunshot wound to the neck. On April 14, 2009, both Artavia and Tia identified defendant in photograph lineups at the police station. Defendant was later arrested, charged, and convicted by a jury. He now appeals as of right.

II. LATE DISCLOSURE OF 911 TAPES

Defendant first argues that the prosecutor violated his rights to discovery and a fair trial by providing the tapes of the 911 calls only three days before trial. A defendant must raise the issue of being denied a fair trial in order to preserve the issue for appeal. *People v Malone*, 193 Mich App 366, 371; 483 NW2d 470 (1992). Defendant did not preserve the issue because he objected on different grounds. Defendant objected to not getting a tape of a particular 911 call

and also objected to the trial court's decision to exclude the tapes from being admitted into evidence. Thus, since defendant never objected to being denied a fair trial, the issue is not preserved.

Unpreserved issues are reviewed for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Under the plain error rule, defendant has the burden to show that (1) an error occurred, (2) the error is plain or obvious, and (3) the error affected a substantial right. *People v Cross*, 281 Mich App 737, 738; 760 NW2d 314 (2008). Furthermore, reversal for unpreserved matters is warranted only "if the defendant is actually innocent or the error seriously undermined the fairness, integrity, or public reputation of the trial." *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006).

Although defendant claims that the alleged discovery violation amounts to a deprivation of constitutional rights, "[t]here is no general constitutional right to discovery in a criminal case." *People v Elston*, 462 Mich 751, 765; 614 NW2d 595 (2000). Instead, "discovery in criminal cases is constrained by the limitations expressly set forth in the . . . criminal discovery rule . . ., MCR 6.201." *People v Greenfield (On Reconsideration)*, 271 Mich App 442, 447; 722 NW2d 254 (2006). Moreover, "due process requires only that the prosecution provide a defendant with material, exculpatory evidence in its possession." *Id.* at 447 n 4.

The prosecutor read the contents of the calls at issue into the record out of the jury's presence:[1]

> Judge, just to make the record clear, [the] caller [at] 2:09 [a.m.] said, "There's an incident at King & Queens Hall." Dispatcher said, "someone called."
>
> Another caller at 2:39 [a.m.], someone says, "We are inside the club. There's guys with guns outside." No reference to shots being fired.
>
> At 2:44 [a.m.] a third call, "King and Queens, I drove past it, I'm in my car. There's a fight in the parking lot, somebody had a bottle, I don't know if there's any weapons."
>
> Then that same person called back five minutes later, 2:49 [a.m.], and said, "Just heard shooting. I heard the shot." That's it.
>
> Then the last call is dispatch.

Because none of the calls was exculpatory, defendant cannot prevail on this claim. Defendant, in his brief on appeal, recognizes that these calls themselves were not exculpatory when he stated, "It was entirely possible that exculpatory evidence could have been obtained from a proper investigation [after receiving the calls] . . . ." Conversely, it is also entirely

[1] Defense counsel agreed with the accuracy of this content.

possible that any subsequent investigation would have resulted in no exculpatory evidence. The one call referring to "guys with guns" easily could have been referring to defendant. Thus, this mere possibility that exculpatory evidence could have been discovered is insufficient to show that defendant actually was denied a fair trial. Accordingly, defendant failed to show any plain error, and his claim fails.

Defendant also argues that the lack of ability to investigate resulted in a denial of the effective assistance of counsel. Normally, a defendant must prove that his trial counsel's performance fell below an objective standard of reasonableness and such performance resulted in prejudice. *People v Davenport*, 280 Mich App 464, 468; 760 NW2d 743 (2008). But a defendant also can be considered to have been denied the effective assistance of counsel when circumstances show that competent counsel very likely could not have rendered meaningful assistance because of interference by the government. *Bell v Cone*, 535 US 685, 696; 122 S Ct 1843; 152 L Ed 2d 914 (2002). However, the Supreme Court has noted that "the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial." *US v Cronic*, 466 US 648, 658; 104 S Ct 2039; 80 L Ed 2d 657 (1984). Because defendant was not prejudiced by the late disclosure of the 911 tapes and was not denied a fair trial, his concomitant ineffective assistance of counsel claim fails as well.

III. JURY NOTIFIED OF PRIOR FELONY

Defendant argues that he was denied a fair trial on his murder count when the jury was informed of his prior felony conviction in connection with his felon in possession of a firearm count. An issue must be raised, addressed, and decided by the lower court to preserve the issue for appeal. *People v Metamora Water Service, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007); see also *Malone*, 193 Mich App at 371. Here, defendant never raised this constitutional issue in the trial court. Accordingly, the issue is not preserved and is reviewed for plain error affecting substantial rights. *Carines*, 460 Mich at 763.

In a criminal case, in which one of the charges against the defendant is being a felon in possession of a firearm, the defendant's right to a fair trial may be impaired if the defendant's prior conviction is revealed to the jury. See *People v Mayfield*, 221 Mich App 656, 659-660; 562 NW2d 272 (1997). However, certain safeguards can ensure a fair trial:

> (1) the fact of defendant's conviction could be introduced by a stipulation, (2) the court can give limiting instructions emphasizing that the jury must give separate consideration to each count of the indictment, and (3) more specifically the jury could be instructed to only consider the prior conviction as it relates to [the felon-in-possession prosecution]. [*Id.* at 660 (brackets in original), quoting *US v Mebust*, 857 F Supp 609, 612-613 (ND Ill, 1994).]

Here, indeed all of these safeguards were followed. Defendant's prior conviction was admitted under a stipulation, such that the nature of the prior conviction was not disclosed to the jury; the trial judge instructed the jury to convict on each count only if every element of each count was proven beyond a reasonable doubt; and, most importantly, the trial judge instructed

the jury that the evidence of the prior conviction can only be used in conjunction with the felon-in-possession count:

> Now, you heard evidence by way of a stipulation that the Defendant had been convicted of a felony. If you believe this evidence,[2] you must be very careful to consider it only for the purpose of the charge made that he was a convicted felon and was in possession of a firearm. You must not consider this evidence for any other purpose. For example, you must not decide that it shows that the Defendant is a bad person or that he is likely to commit crimes. You must not convict the Defendant here because you think he is guilty of other bad conduct.

Because all of the safeguards described in *Mayfield* were present, defendant cannot show how he was denied a fair trial. Defendant maintains that these safeguards are inadequate because jurors only follow their instructions in a "perfect world." As a matter of law and practicality, jurors are presumed to follow the court's instructions unless there is an "overwhelming probability" that the jury would be unable to comply. *People v Dennis*, 464 Mich 567, 581; 628 NW2d 502 (2001), quoting *Greer v Miller*, 483 US 756, 767 n 8; 107 S Ct 3102; 97 L Ed 2d 618 (1987). There is nothing to suggest that, with the *Mayfield* safeguards in place, there would be an overwhelming probability that a jury would be unable to comply with the instructions. As a result, defendant's claim fails.

IV. PROSECUTORIAL MISCONDUCT

Defendant alleges that several instances of prosecutorial misconduct deprived him of a fair trial. In order to preserve a prosecutorial misconduct issue, a defendant must either contemporaneously object or request a curative instruction. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). Here, defendant did neither.

Generally, claims of prosecutorial misconduct are reviewed de novo. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). The test is whether a defendant was denied a fair and impartial trial due to the actions of the prosecutor. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). However, unpreserved claims are reviewed for plain error. *Carines*, 460 Mich at 763. "[W]here a curative instruction could have alleviated any prejudicial effect we will not find error requiring reversal." *Ackerman*, 257 Mich App at 449.

During closing arguments, prosecutors are allowed to argue the evidence and make reasonable inferences to support their case. *People v Christel*, 449 Mich 578, 599-600; 537 NW2d 194 (1995). Defendant argues that the prosecutor made three improper remarks during closing arguments. First, defendant takes issue with the prosecutor's statement, "[Defendant] said he is searched as he went into the club, which is why you keep your gun outside in the car."

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[2] In fact, the court instructed the jurors that they were not required to accept the stipulation if they desired.

Defendant does not explain how or why this was impermissible other than to state that it was "false," with no supporting evidence. The purpose of closing argument is not to simply reiterate the evidence that was presented at trial; the purpose is to *argue certain inferences* from the evidence presented. See *id.*; *People v Finley*, 161 Mich App 1, 9; 410 NW2d 282 (1987). We presume that defendant is attempting to portray the entire statement, including the "which is why you keep your gun outside in the car" portion, as being attributed to defendant. However, that view is not supported when read in context. It was clear that the prosecutor was not attempting to provide an entire quote of what defendant said. She simply was reminding the jury that defendant admitted to getting searched before entering the party, which would explain why he had to go back to the car to get his gun. The inference that defendant left his gun in a car was a possible, reasonable inference, which was supported by the fact that Tia heard defendant say he was going to get a gun and the fact that Artavia saw defendant walk away from the parking lot area, only to return later with a brandished handgun. Thus, the prosecutor's closing argument remark was acceptable.

Second, defendant claims that the following remark was impermissible:

> Oh, by the way, think about this as it relates to premeditation and deliberation. When the defendant is out on Schaefer, whether he got that gun from a Chevy Lumina or whether he got his gun from somebody driving this red mini van, he had to tell someone, meet me at the gate. Because what did Artavia tell you that as soon as he shot Shawn, guess what was waiting? His getaway car with the sliding door open. The driver ready to go, gear is probably in neutral or drive, sliding door is open and the Defendant shoots Shawn, has a waiting getaway car and said let's roll and jumps in the car.

Again, defendant does not show how this was an unreasonable or impermissible inference from the evidence presented at trial. With Artavia's testimony, that the red minivan "skirted" up after the shooting and sped away after defendant jumped inside, such an inference is in fact well supported. Accordingly, the prosecutor's remark was appropriate.

Third, defendant objects to the prosecutor's remark, after noting how defendant and his girlfriend left the party in different vehicles, "But why not go home but to maybe put the gun away because you just shot somebody[?]" Here, the prosecutor was attempting to explain why defendant would have gone home first before meeting up with the rest of his family at his aunt's home. Again, the prosecutor is allowed to argue reasonable inferences. Clearly, this would not have been the only reason for heading home before going to his aunt's home, but it was a possible reason. Defense counsel was free to argue a completely different inference from these facts.

Additionally, defendant argues that the prosecutor impermissibly attempted to invoke the jury's "civic duty" to convict defendant. A prosecutor may not "appeal to the jury's civic duty by injecting issues broader than guilt or innocence or encouraging jurors to suspend their powers of judgment." *People v Thomas*, 260 Mich App 450, 455-456; 678 NW2d 631 (2004). While questioning the officer in chief, Officer Byron McGhee, the following exchange took place:

Q. Okay. Officer McGhee, are you what is called the officer-in-charge of this homicide investigation inquiring into the homicide of Deshawn Jenkins?

A. Yes.

Q. And as the officer-in-charge, can you explain to us, first of all, how if someone is shot but hasn't died yet or is still receiving emergency care through hospital attempts to keep a person alive, at what point does homicide enter into this?

A. Generally when a person goes to the hospital as a victim of a shooting, the responding officers will gather what the condition, chart number and who was the attending doctor. If the individual is critical, homicide does not respond. Critical shootings are handled by the districts.

Q. Go ahead, sir.

A. If that person expires while at the hospital, then that is turned over to homicide.

Q. Okay. And is that because of the volume, sir, that you cannot respond to every critical shooting?

A. That is correct.

Defendant's attempt to characterize this last statement by the prosecutor as an appeal to get the jury to "do[] justice" is not supported in the record. First, this statement was not even an argument or statement; instead, it was a question to the officer in chief, "[I]s that because of the volume, sir, that you cannot respond to every critical shooting?" This type of remark differs greatly from the prohibited types of prosecutorial statements where the prosecutor makes a direct plea to the jury to convict on some basis unrelated to defendant's actual guilt or innocence. See, e.g., *People v Williams*, 65 Mich App 753, 755-756; 238 NW2d 186 (1975) (holding it was improper for prosecutor to tell jury, "[Y]ou have an opportunity to effect [sic] the drug traffic in this city. You have a voice. You have a chance to use it.") Clearly, there was no plea, and, moreover, it is incredulous to think how such an isolated question would have affected defendant's right to a fair trial.

After reviewing the record we conclude that all of the challenged prosecutor's remarks were permissible. Because there was no error, defendant cannot show how any of the remarks, either singularly or in the aggregate, acted to deny defendant a fair trial. Accordingly, his prosecutorial misconduct claim fails.

V. AUTOPSY PHOTOGRAPHS

Defendant claims that the autopsy photographs admitted at trial were violative of MRE 403. To preserve an evidentiary issue for appeal, the party opposing the admission of the evidence must object at trial and specify the same ground for objection that is asserted on appeal. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). Defendant preserved the issue

by objecting to the admission of the photographs, based on MRE 403. Preserved issues of whether evidence was admissible are reviewed for a clear abuse of discretion by the trial court. *Id.* at 113. A trial court abuses its discretion when it reaches a decision resulting in an outcome that falls outside the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

When a defendant pleads not guilty to a crime, "the prosecution may offer *all* relevant evidence, subject to MRE 403, on *every* element." *People v Mills*, 450 Mich 61, 70; 537 NW2d 909 (1995) (emphasis added). In fact, a defendant's offer to stipulate to certain elements does not alter this principle for those elements. *Id.* at 71. Here, defendant was charged with a homicide, which necessarily includes the element of causing the death of another person. Therefore, the prosecution was entitled to offer all relevant evidence establishing that Shawn died as a result of defendant's actions. Plainly, any photographs showing Shawn's body in a deceased state would be relevant and, thus, admissible subject only to MRE 403.

MRE 403 states, in pertinent part, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001) quoting *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). Contrary to defendant's assertion, photographs are not inadmissible simply because a witness can testify about the information contained in the photographs. *Mills*, 450 Mich at 76. Moreover, photographs are admissible to corroborate a witness's testimony, and a photograph's "[g]ruesomeness alone need not cause exclusion." *Id.* The proper analysis is whether the photograph's probative value is substantially outweighed by unfair prejudice. *Id.* In this instance, the probative value of the photographs is not substantially outweighed by unfair prejudice. First, the photographs were not cumulative to any other physical evidence admitted at trial. While the medical examiner used a Styrofoam head at trial for demonstrative purposes, it was never admitted into evidence. Thus, any reliance defendant has on the Styrofoam model acting as a suitable substitute is misplaced. Second, the photographs corroborated Artavia's testimony. Artavia testified that she saw defendant shoot Shawn near the left side of neck, and these photographs show that Shawn suffered a wound to the left side of his neck area. Third, the photographs were not gruesome or otherwise would have acted to excite passion from the jury. The photos simply depicted Shawn's neck, face, and head, with a visible wound on the left side of the neck. There was nothing particularly inflammatory or shocking about them. In short, there is nothing about the photos that would suggest they were calculated to arouse the sympathies or prejudices of the jury. Accordingly, any potential of unfair prejudice was severely abated and did not substantially outweigh its probative value.

As a result, the trial court's decision to admit the photographs did not fall outside the range of reasonable and principled outcomes. Thus, the trial court did not abuse its discretion, and defendant's claim fails.

VI. SUFFICIENCY OF THE EVIDENCE

Finally, defendant claims that there was insufficient evidence to support his first-degree murder conviction. A criminal defendant does not have to take any particular action in order to

preserve for appeal a challenge to the sufficiency of the evidence. *People v Patterson*, 428 Mich 502, 505; 410 NW2d 733 (1987). A challenge to the sufficiency of the evidence is reviewed de novo and in a light most favorable to the prosecution to determine "if any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). "All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted).

"To establish first-degree premeditated murder, the prosecutor must prove that the defendant intentionally killed the victim with premeditation and deliberation." *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). Defendant first argues that the sole eyewitness, Artavia, who stated that she saw defendant shoot Shawn, was not credible because her testimony was not corroborated by other physical evidence or other testimony. Defendant cites no authority for disregarding this testimony. In fact, this Court has held that eyewitness testimony may be sufficient to establish a person's guilt. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Moreover, it is the jury's role as the fact-finder to determine the credibility of witnesses and to weigh the evidence. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). It is abundantly clear that the jury accepted Artavia's versions of the events as true. This Court is not free to insert its own judgment in this regard. *Id.* Accordingly, viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence, in the form of Artavia's eyewitness testimony, to prove beyond a reasonable doubt that defendant murdered Shawn.

Defendant's attempt to challenge Artavia's credibility because she referred to defendant's clothes that night as being "dark color" or "black," is not persuasive. Defendant apparently relies on the premise that a witness's credibility can be challenged, albeit in the context of a motion for a new trial, if the testimony "is patently incredible or defies physical realities." *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998). Defendant argues that, because defendant actually was wearing a brown suit, it proves that Artavia is patently unreliable. However, various defense witnesses described defendant's pants on the night of the murder as "brown," "burgundy," and "black."[3] Thus, Artavia calling them dark and possibly black is not wholly inconsistent with how other witnesses perceived defendant that night and was not patently incredible.[4]

Defendant also contends that there was insufficient evidence to prove that the killing was premeditated and deliberated. Premeditation and deliberation require sufficient time to allow the defendant to reconsider his actions, or in other words, sufficient time to "take a second look."

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[3] These discrepancies in color description took place even though these defense witnesses all had the benefit of viewing an exhibit that was a photograph of defendant taken that night at the party.

[4] And, although not evidence, defense counsel's reference to the pants as "beige" during closing argument further supports the idea that defendant's clothes were not easily described.

People v Abraham, 234 Mich App 640, 656; 599 NW2d 736 (1999). Factors relevant to the establishment of premeditation and deliberation include the following: (1) evidence of the prior relationship of the parties, (2) the defendant's actions before the killing, (3) the circumstances of the killing itself, and (4) the defendant's conduct after the homicide. *Id*. "Circumstantial evidence and reasonable inferences from the evidence can be sufficient to prove the elements." *Id*.

There was sufficient circumstantial evidence to support a finding that defendant premeditated and deliberated the killing. After defendant and Shawn separated from their fist-fight, Tia heard defendant say he was going to get his gun, and Artavia saw defendant leave the parking lot and walk north along Schaefer. Slightly afterward, Artavia saw defendant return with a handgun held to his side, before walking up to Shawn and shooting him point blank. The amount of time that defendant took to retrieve the gun and walk back constituted ample time and opportunity for him to have reconsidered and have taken "a second look." Furthermore, the red minivan, which was waiting at the end of the driveway for defendant after the shooting, was additional circumstantial evidence that defendant premeditated the murder by enacting a plan, which would allow for his immediate escape.

In sum, when viewing all of the direct and circumstantial evidence in a light most favorable to the prosecution, including resolving all conflicts in favor of the prosecution, a jury could conclude beyond a reasonable doubt that defendant killed Shawn with premeditation and deliberation. Therefore, defendant's claim fails.

Affirmed.

/s/ Pat M. Donofrio
/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens